No. 92-1196

In the Supreme Court of the United States

OCTOBER TERM, 1992

WALDEMAR RATZLAF AND
LORETTA RATZLAF, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, in a prosecution for structuring currency transactions for the purpose of evading currency reporting requirements, the government must prove that the defendant knew that structuring transactions for that purpose was unlawful.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations:

Statutes and regulations—Continued: Page

Miscellaneous:

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-40) is reported at 976 F.2d 1280.

JURISDICTION

The judgment of the court of appeals was entered on October 6, 1992. On January 4, 1993, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including January 19, 1993. The petition for a writ of certiorari was filed on January 14, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Nevada, petitioner Waldemar Ratzlaf was convicted on four counts of willfully structuring currency transactions for the purpose of evading federal reporting requirements, in violation of 31 U.S.C. 5322(a) and 5324(3).[1] Both petitioners were convicted of conspiring to violate the federal anti-structuring laws, in violation of 18 U.S.C. 371, and of interstate travel in aid of racketeering, in violation of 18 U.S.C. 1952(a)(3). Waldemar Ratzlaf was sentenced to 15 months in prison, to be followed by three years of supervised release, and was fined $26,300. Loretta Ratzlaf was sentenced to five years of probation, including ten months of home detention, and was fined $7,900. Pet. App. 13, 16-17. The court of appeals affirmed. Pet. App. 1-40.

1. Petitioners were gamblers with established lines of credit at 15 casinos in New Jersey and Nevada. Petitioner Waldemar Ratzlaf was a regular customer in the casinos. He was a high-stakes gambler. On October 20, 1988, the High Sierra Casino increased Waldemar's line of credit from $25,000 to $160,000. That day, he used up his credit limit by losing $160,000 at blackjack. The casino gave Waldemar one week to pay the debt. Pet. App. 8-9.

On October 27, petitioners returned with cash to pay their debt. Waldemar Ratzlaf told the shift manager that he did not want any written report to be filled out

[1] We note that on October 28, 1992, Congress amended 31 U.S.C. 5324. See Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, Tit. XV, § 1525(a), 106 Stat. 4064. What was formerly 31 U.S.C. 5324(3) was unaffected in substance, but that provision will be recodified at 31 U.S.C. 5324(a)(3). For purposes of simplicity, we refer to the version in effect when the court of appeals issued its decision.

concerning the transaction. When the shift manager told the casino's vice president Stephen Allmaras about the situation, Allmaras told Ratzlaf that the casino would be required to fill out a report on the transaction because it involved more than $10,000 in currency. Allmaras told petitioner that he would accept a single cashier's check in lieu of the cash. Pet App. 9-10.

The next day, petitioners went to several banks in and around Stateline, Nevada, and South Lake Tahoe, California. They used cash to purchase, or attempt to purchase, cashier's checks in amounts of less than $10,000. After doing so, petitioners went back to the High Sierra Casino and made a partial payment on their debt. Pet. App. 10-11.

Petitioners returned to their residence in Portland, Oregon. Between November 28 and November 30, 1988, Waldemar gave three individuals cash and asked them to purchase cashier's checks for him, two for $5,000 and one for $7,500. Between November 29 and December 5, 1988, petitioners used currency to buy five cashier's checks in amounts less than $10,000 from two banks. Pet. App. 11-12.

Internal Revenue Service investigators asked petitioners why they had bought the cashier's checks with cash. Petitioners claimed that they had enough currency from gambling proceeds,[2] but that the casino had asked them to use cashier's checks to pay their $160,000 debt. Petitioner Loretta Ratzlaf added that the management told them to buy cashier's checks in small amounts so that the casino would not have to file a report. The casino vice president denied that he advised

[2] At trial, Waldemar Ratzlaf testified petitioners hid earnings from a restaurant they owned and gambling winnings in furniture in their bedroom. Pet. App. 12.

petitioners to purchase cashier's checks at several banks in amounts less than $10,000. Pet. App. 12-13.

2. At trial, the district judge gave the jury the following instruction on the currency structuring charges:

> The essential elements required to be proven beyond a reasonable doubt . . . are as follows:
>
> First: [Petitioners] had knowledge of a financial institution's duty to report currency transactions in excess of $10,000;
>
> Second: With such knowledge, [petitioners] knowingly and willfully structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction;
>
> Third: The purpose of the structured transaction was to evade the transaction reporting requirement;
>
> Fourth: The structured transaction(s) involved one or more domestic financial institutions.
>
> An act is done knowingly and willfully for the purpose of [31 U.S.C. 5322(a), 5324(3)] if [petitioners], with knowledge of a financial institution's duty to report currency transactions in excess of $10,000, voluntarily or intentionally structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction with the purpose of evading the currency reporting requirements.
>
> . . . .
>
> The government does not have to prove that the [petitioners] knew that structuring was unlawful[,] nor does the government have to prove that the defendants knew of the existence of the law which they are charged with breaking. . . . However, if a defendant did not have knowledge of a bank's duty to report currency transactions in excess [of] $10,000, that may be considered a defense.
>
> It is not a defense that the [petitioners] did not know that "structuring" itself is [illegal] or of the existence of [31 U.S.C. 5322(a), 5324(3)].

Pet. App. 13-16.

3. In affirming petitioners' convictions, the court of appeals held that a willful violation of the currency structuring statute (31 U.S.C. 5324(3)) requires proof that the defendant structured currency transactions with the intent to evade reporting requirements imposed by law, but that knowledge that structuring is illegal is not necessary for conviction. Pet. App. 21-22. The court rejected petitioners' contention that, as in the case of criminal tax offenses (see *Cheek* v. *United States*, 498 U.S. 192 (1991)), the government must establish knowledge of illegality in order to establish criminal willfulness under the anti-structuring laws. The court noted that this Court in *Cheek* relied heavily on the complexity of the tax laws, and emphasized that its interpretation of "willfully" in the criminal tax statutes was " 'an exception to the traditional rule' that 'every person kn[ows] the law.' " Pet. App. 25 (quoting *Cheek*, 498 U.S. at 199, 200). Finding that the anti-structuring laws do not present similar concerns, the court joined several other courts of appeals in finding the rationale of *Cheek* inapplicable to willful violations of Section 5324(3). Pet. App. 26-28.

The court further concluded that nothing in the language or history of Section 5324(3) suggests that it requires knowledge that structuring is illegal. In particular, the court noted that Section 5324(3) was enacted in 1986 because several courts of appeals had held that it was not unlawful to structure currency transactions to

avoid federal reporting requirements. The court explained that Section 5324(3) was designed to overturn those decisions and codify the rulings of other courts that structuring of currency transactions constituted a criminal offense. Pet. App. 33-38.

DISCUSSION

Petitioners contend that to prove a "willful[] violat[ion]" (31 U.S.C. 5322(a)) of the anti-structuring provisions of 31 U.S.C. 5324(3), the government must establish that the defendant knew it was unlawful to structure currency transactions for the purpose of evading federal reporting requirements. Pet. 16-31. We believe that the court of appeals properly rejected petitioners' claim. However, because there is a conflict among the circuits on this important issue of federal law, we do not oppose the petition for a writ of certiorari.

1. a. In 1970, Congress passed the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act), Pub. L. No. 91-508, Tit. II, 84 Stat. 1118, in response to an increase in the use of financial institutions by those engaged in criminal activity. See H.R. Rep. No. 975, 91st Cong., 2d Sess. 10 (1970) (legislation is needed because "[p]etty criminals, members of the underworld, those engaging in 'white collar' crime and income tax evaders use, in one way or another, financial institutions in carrying on their affairs"). To combat that trend, Congress enacted the provision now codified at 31 U.S.C. 5313(a), which requires a "domestic financial institution" to file a report when it engages in "a transaction for the payment, receipt, or transfer" of cash or other designated monetary instruments in an amount or denomination prescribed by the Secretary of the Treasury.[3] See Pub.

[3] By regulation, the Secretary has required banks to file currency transaction reports (CTRs) for any "transaction in currency of more than $10,000." 31 C.F.R. 103.22(a)(1).

L. No. 91-508, Tit. II, § 221, 84 Stat. 1122. Congress also provided that any person who "willfully violat[es]" the provisions of Title 31 that include the reporting requirements, or any regulation prescribed thereunder, is guilty of a criminal offense. 31 U.S.C. 5322(a). See Pub. L. No. 91-508, Tit. II, § 209, 84 Stat. 1121.

Until 1986, no provision specifically prohibited individuals doing business with financial institutions from structuring their transactions to evade the statute's reporting requirements.[4] In the Money Laundering Control Act of 1986, which was enacted as Title I, Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-18, Congress adopted the anti-structuring provision at issue here. See Pub. L. No. 99-570, § 1354(a), 100 Stat. 3207-22. Specifically, 31 U.S.C. 5324(3) provides that "[n]o person shall for the purpose of evading the reporting requirements of section 5313(a) * * * structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."

b. The court of appeals' holding—that a willful violation of Section 5324(3) does not require proof that the defendant knew that structuring is unlawful—is consistent with the decisions of nine other courts of appeals. See, *e.g.*, *United States* v. *Scanio*, 900 F.2d 485, 489-492

[4] Prior to 1986, there was a conflict in authority over the question whether a person who structured currency transactions to evade reporting requirements could be criminally liable under various theories of accessory liability. Compare, *e.g.*, *United States* v. *Tobon-Builes*, 706 F.2d 1092, 1096-1101 (11th Cir. 1983) (criminal liability under 18 U.S.C. 2(b) and 1001), and *United States* v. *Heyman*, 794 F.2d 788, 790-793 (2d Cir.) (liability under 18 U.S.C. 2(b) and 371), cert. denied, 479 U.S. 989 (1986), with *United States* v. *Anzalone*, 766 F.2d 676, 679-683 (1st Cir. 1985) (no liability), and *United States* v. *Varbel*, 780 F.2d 758, 760-763 (9th Cir. 1986) (same).

(2d Cir. 1990); *United States* v. *Caming*, 968 F.2d 232, 238-241 (2d Cir.), cert. denied, 113 S. Ct. 416 (1992); *United States* v. *Shirk*, 981 F.2d 1382, 1389-1392 (3d Cir. 1992); *United States* v. *Rogers*, 962 F.2d 342, 343-345 (4th Cir. 1992); *United States* v. *Beaumont*, 972 F.2d 91, 93-95 (5th Cir. 1992) (no plain error); *United States* v. *Baydoun*, No. 92-5594 (6th Cir. Jan. 25, 1993), slip op. 9; *United States* v. *Jackson*, No. 90-1836 (7th Cir. Jan. 4, 1993), slip op. 17-18; *United States* v. *Gibbons*, 968 F.2d 639, 643-645 (8th Cir. 1992); *United States* v. *Hoyland*, 914 F.2d 1125, 1128-1130 (9th Cir. 1990); *United States* v. *Dashney*, 937 F.2d 532, 537-540 (10th Cir.), cert. denied, 112 S. Ct. 402 (1991); *United States* v. *Brown*, 954 F.2d 1563, 1567-1569 (11th Cir.), cert. denied, 113 S. Ct. 284 (1992); but see *United States* v. *Aversa*, No. 91-1363 (1st Cir. Jan. 13, 1993) (en banc), slip op. 16-17, 21. Under those decisions, the element of willfulness is "satisfied by proof that [the defendant] (1) knew that the bank was legally obligated to report currency transactions exceeding $10,000 and (2) intended to deprive the government of information to which it is entitled." *Scanio*, 900 F.2d at 491.

We believe that those decisions correctly interpret the anti-structuring laws. A "willful violation" is often described as a criminal act done with a "bad purpose" or "evil motive." *United States* v. *Murdock*, 290 U.S. 389, 394, 395 (1933). As the language of Section 5313(a) makes plain, and the legislative history of the Bank Secrecy Act confirms (see H.R. Rep. No. 975, *supra*, at 10), the purpose of the "currency transaction report" (CTR) requirement is to provide the government with information about the individuals engaging in large currency transactions. To effectuate that aim, Section 5324 specifically proscribes the structuring of cash transactions "for the purpose of evading the reporting requirements of section

5313(a)."[5] Thus, in plain terms, Section 5324 specifies the "bad purpose" (*Murdock*, 290 U.S. at 394) with which a defendant must act to commit a "willful[]" anti-structuring violation. If a person knows about a bank's duty to provide information about large currency transactions conducted with its customers, and then acts with the specific intent to deprive the government of that information about himself, he is acting with the precise "bad purpose" contemplated by Section 5324.

Interpreting the willfulness element to require knowledge of, and a specific intent to evade, the CTR requirements, rather than knowledge that structuring is unlawful, is the construction of the anti-structuring statute most consistent with basic principles of criminal law. That construction of the statute gives effect to the general rule that "ignorance of the law is no excuse"—a premise "deeply rooted in the American legal system." *Rogers*, 962 F.2d at 344; see, *e.g.*, *Cheek*, 498 U.S. at 199; *Lambert* v. *California*, 355 U.S. 225, 228 (1957); *United States* v. *International Minerals & Chemical Corp.*, 402 U.S. 558, 565 (1971). It is true that Congress has at times departed from that rule (1) where its application could penalize "a broad range of apparently innocent con-

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[5] As one court of appeals has explained, in enacting Section 5324, Congress's

> target was the transactors—the 'money launderers,' a term we use broadly to denote persons desiring to convert 'hot,' suspiciously large, or easily traced cash sums into more discreet media of exchange—themselves. The statute's aim was to prevent people from either causing the (usually innocent) bank to fail to file a required report or defeating the goal of the requirement that large cash deposits be reported to the [IRS] by breaking their cash hoard into enough separate deposits to avoid activating the requirement.

United States v. *Davenport*, 929 F.2d 1169, 1173 (7th Cir. 1991) (Posner, J.), cert. denied, 112 S. Ct. 871 (1992).

duct," *Liparota* v. *United States*, 471 U.S. 419, 426 (1985) (misuse of food stamps), or (2) in the criminal tax context, where the complexity and proliferation of statutes and regulations has made "it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed." *Cheek*, 498 U.S. at 199-200. But neither of those exceptions applies in the context of the anti-structuring laws.

First, even if a defendant does not specifically know that purposeful structuring is unlawful, his conduct by its nature displays a "careless disregard whether or not [he] ha[d] the right so to act." *Murdock*, 290 U.S. at 395. When an individual purposefully structures a cash transaction to evade CTR requirements of which he is aware, he "engage[s] in affirmative conduct and demonstrate[s] an awareness of the legal framework relative to currency transactions which, it is reasonable to conclude, should have alerted him to the consequences of his conduct." *Scanio*, 900 F.2d at 490. In other words, a person who has evaded a known CTR requirement "knew he was acting in a highly regulated area and * * * intended to deprive the government of information to which it was entitled." *Ibid.* (emphasis omitted). Those are not circumstances of the kind that have typically led Congress to require specific knowledge of the unlawfulness of a defendant's acts. See *International Minerals & Chemical Corp.*, 402 U.S. at 565 (knowledge of regulatory prohibition not necessary where "the probability of regulation is so great" that someone acting in the manner prohibited "must be presumed to be aware of the regulation").

Second, the principle that the Court has applied in the criminal tax context is inapposite here. As the Court emphasized in *Cheek*, the "special treatment of criminal tax offenses is largely due to the complexity of the tax laws" and the extensive "proliferation of [tax] statutes

and regulations." 498 U.S. at 199, 200. In contrast, "[t]he currency reporting and structuring laws are not as complex as the often Byzantine tax code" (*Shirk*, 981 F.2d at 1391), and the courts of appeals have properly refused to extend the criminal tax standard of "willfulness" to the present context. See, *e.g.*, *United States* v. *Caming*, 968 F.2d at 240-241; *United States* v. *Rogers*, 962 F.2d at 344; *United States* v. *Beaumont*, 972 F.2d at 94-95; *United States* v. *Brown*, 954 F.2d at 1569 n.2; *United States* v. *Dashney*, 937 F.2d at 539-540.

The court of appeals' decision in this case is consistent with the Model Penal Code's conclusion that "[a] requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears." Model Penal Code and Commentaries § 2.02(8), at 227 (Official Draft and Revised Comments 1985).[6] As the commentary to the Code noted, that distillation of the "wilfulness" requirement "follows many judicial decisions as well as legislation in a number of states." *Id.* § 2.02 comment 10, at 248 & nn.44-45; see *American Surety Co.* v. *Sullivan*, 7 F.2d 605, 606 (2d Cir. 1925) (L. Hand, J.) ("The word 'willful,' even in criminal statutes, means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.") (citing cases). In the absence of any indication that a more substantial

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[6] Just prior to the enactment of the Bank Secrecy Act of 1970, the Supreme Court in *Leary* v. *United States*, 395 U.S. 6, 46 & n.93 (1969), and *Turner* v. *United States*, 396 U.S. 398, 416 & n.29 (1970), relied on the Model Penal Code's definition of the term "knowledge" in construing a federal criminal statute that used the term "knowing"; hence, it is reasonable to look to the Code's definition of "willfulness" for guidance in determining what that related term means.

"willfulness" requirement was intended, the courts have properly construed that requirement as being met when a defendant structures currency transactions with the specific intent to evade known CTR requirements.

Finally, the legislative history preceding the enactment of Money Laundering Control Act of 1986 confirms that a knowing evasion of the CTR requirement is all that is necessary to prove a willful violation of Section 5324(3). As discussed, no statutory provision prior to 1986 explicitly forbade the structuring of transactions to evade the CTR requirement, and there was a conflict among the circuits on the question whether a person who structured transactions to avoid reporting requirements was criminally liable. See note 4, *supra*. The leading case holding structuring unlawful was *United States* v. *Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), which held that purposeful structuring constituted an offense under 18 U.S.C. 1001 and 2(b).[7] Significantly, the court in *Tobon-Builes* held that the "willfulness" requirement of Sections 1001 and 2(b) was established "by evidence showing [that the defendant] knew about the currency reporting requirements and that he purposely sought to prevent the financial institutions from filing required reports * * * by structuring his transactions

[7] In relevant part, Section 1001 imposes criminal penalties on any person who, "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device, a material fact." Section 2(b) provides that one who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." *Tobon-Builes* held that structuring was "nothing more than a scheme to prevent * * * financial institutions from fulfilling their legal duty to file reports," and that Section 2(b) was sufficiently broad to reach "one who 'causes the commission of an indispensable element of the offense by an innocent agent or instrumentality.'" 706 F.2d at 1098, 1099.

as multiple smaller transactions under $10,000." 706 F.2d at 1101.

The legislative reports preceding the 1986 enactment of Section 5324 relied directly on *Tobon-Builes*. The Senate Report accompanying a prior bill incorporating the substance of what became Section 5324 explained that the bill "would codify *Tobon-Builes* and like cases" and would "expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report." S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986); see *id.* at 38; H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-19 & n.1 (1986) (favorably citing *Tobon-Builes*). That endorsement of *Tobon-Builes* confirms that Section 5324 was enacted to penalize persons who know of the reporting requirement and purposefully act to evade it. See *United States* v. *Brown*, 954 F.2d at 1569 ("It is highly unlikely that in passing the anti-structuring law, and thereby providing even more notice than the defendant had in *Tobon-Builes*, Congress was somehow imposing an additional requirement that the defendant be aware of the illegality of his or her conduct."); see also, *e.g.*, *United States* v. *Scanio*, 900 F.2d at 491; *United States* v. *Shirk*, 981 F.2d at 1391.

The Senate Report also offered the following explanation of the intent required under Section 5324:

> [A] person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days *with the specific intent that the participating bank or banks not be required to file [CTRs] for those transactions*, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single

> transaction * * * would not be subject to liability under the proposed amendment.

S. Rep. No. 433, *supra*, at 22 (emphasis added). The only state-of-mind requirement mentioned is the "specific intent" to prevent a bank from filing CTRs required by law; hence, there is no basis for engrafting the further requirement of knowledge of the statutory prohibition against structuring.

2. Although we believe that the court of appeals' decision was correct, we do not oppose the petition for a writ of certiorari in this case, because the courts of appeals are in conflict on the question presented. Subsequent to the decision in this case, the First Circuit, sitting en banc, issued a conflicting ruling in *United States* v. *Aversa*, No. 91-1363 (Jan. 13, 1993). There, the defendants acknowledged that they knew about the CTR requirements, and they purposefully structured currency transactions to avoid creating a paper trail that could be followed by the wife of one of the defendants. Both defendants sought to offer a defense premised on lack of knowledge of the unlawfulness of structuring, but the district court granted the government's motion in limine to exclude evidence relating to that defense. One of the defendants entered a conditional guilty plea, reserving the right to appeal the trial court's ruling on the government's motion. The other defendant was convicted after a jury trial in which the court instructed, over objection, that mistake-of-law is no defense. *Aversa*, slip op. 5-6.

The court of appeals consolidated the defendants' appeals with another appeal in a structuring case being reheard en banc.[8] In reversing their convictions, the en

[8] In that case, the conviction was affirmed because the district court had permitted the defendant to introduce evidence relating to his knowledge of the law and instructed the jury that the defendant had to act "with the specific intent to do something the law forbids, that is to say with bad purpose, either to disobey or disregard the law." *Aversa*, slip op. 5, 21-22.

banc court explicitly rejected the position of the majority of the circuits. See *Aversa*, slip op. 9. The court held instead that to prove a willful violation of the anti-structuring law, the government must show either the violation of a known legal duty (not to structure) or a reckless disregard of the law. *Id.* at 21. Applying that standard, the court reversed the convictions of both defendants, noting that neither of them had had the opportunity to "offer[] any evidence as to their ignorance of the antistructuring law." *Id.* at 22.

That decision conflicts with the rulings of every other court of appeals to consider the issue, including the court in this case. Moreover, because the decision in *Aversa* was rendered by the en banc court, the First Circuit is unlikely to reconsider its position.

Finally, the issue arises frequently, as it pertains to the construction of a basic element of the federal anti-structuring law, an important federal criminal statute. Review by this Court is therefore warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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